

GOVERNMENT OF TELANGANA
ABSTRACT

Tribal Welfare Department – Revision Petition filed by Sri Theerthala Chidambara Rao S/o late Venkateswarlu R/o Mutcherla village of Kamepalli Mandal, Khammam District, under Section 6 of Land Transfer Regulation I of 1959 as amended by Regulation I of 1970, against the orders of the Addl.Agent to Govt.& PO ITDA Bhadrachalam in CMA NO.27/2016, dt.24.3.2020 – Allowed – Orders – Issued.

TRIBAL WELFARE (LTR) DEPARTMENT

G.O.Ms.No. 52

**Dated: 28-06-2021,
Read the following:-**

1. Revision Petition filed by Sri Theerthala Venkateswarlu Died per L.R. T.Chidambara Rao, S/o. Late T.Venkateswarlu, R/o. H.No.3-159, Mutcherla (V) Kamepally (M), Khammam District dated: 11.06.2020, Endt.No.757/M(STW,W&CW), dt.11.06.2020.
2. Govt.Memo No.554/TW.LTR/2020, dt:14.07.2020.
3. Order received from the Asst. Registrar, High Court for the State of Telangana, IA No. 1 of 2020 in WP.No. 11472 of 2020, dated. 05.08.2020.
4. Letter received from the PO, ITDA & AAG Bhadrachalam, Rc.No.A5/801/LTR/2020 (CMA.No. 27/2016), Dated 17.08.2020
5. Govt. Memo.No.554/TW.LTR/2020. Dt: 14.09.2020
6. Order received from the Asst. Registrar, High Court for the State of Telangana in WP.No. 9237 of 2020, dated. 29.06.2020.
7. Govt. Memo.No.554/TW.LTR/2020. Dt: 21.09.2020.
8. Govt. Memo.No.554/TW.LTR/2020. Dt: 08.01.2021.
9. Govt. Notice.No.554/TW.LTR/2020. Dt: 08.01.2021.
10. Letter Rc.No.A3/118/2021/LTR received from the AAG & PO, ITDA Bhadrachalam, Dated 22.01.2021.
11. Written Arguments by Counsel Sri P.V.Ramana on behalf of the Revision Petitioner on 08.02.2021.

ORDER

1. In the reference 1st read above, Sri Theerthala Chidambara Rao S/o late Venkateswarlu R/o Mutcherla village of Kamepalli Mandal, Khammam District has filed the present Revision Petition U/s.6A of the LT Regulation I of 1959 as amended by Regulation I of 1970 on behalf of his late father Sri Theertala Venkateswarlu against the orders dt.24.3.2020 of the Addl. Agent to Govt. & Project Officer, ITDA, Bhadrachalam in CMA No.27/2006 in respect of land admeasuring acs.4.08 gts in Sy.No.543/A situated in Mutcherla village of Kamepalli Mandal, Khammam District.

2. The case was called on 23.1.2021. Counsel for Petitioner Sri P.V.Ramana and Sri K.Narasimha Rao, Dy.Tahsildar, Kamepalli Mandal were present. Perused pahanies produced by Dy.Tahsildar. Counsel prayed for time for submission of written arguments. 2 weeks time granted. Counsel submitted written arguments on 8.2.2021 in the reference 11th read above.

3. The history of the case is as follows:

4. The Agency Divisional Officer, Kothagudem was registered LTR case No.3/2014/Kmpl basing on suo-moto enquiry with the particulars of village records of Mucharla village of Kamepalli Mandal, Kothagudem Revenue Division of Khammam District against Sri Theerthala Venkateswarlu

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S/o Narsaiah R/o Mucharla village of Kamepalli Mandal as Respondent/Occupant (NT) and 1) Sri Pothuraju Narayana S/o Narsimha and 2) Sri Pothuraju Rama Krishnaiah S/o Narayana R/o Mucharla village of Kamepalli Mandal as Sellers (NT) in the court of the Agency Divisional Officer, Kothagudem. Notices in Form-E as required under 7 (1) and 7 (22) of APSA Land Transfer Rules, 1969 were issued to both sellers and respondent directing to show cause as to why respondent/occupant should not be ejected from the land. Hearings were conducted on 27.12.2014, 03.01.2015, 24.01.2015, 07.02.2015, 07.03.2015, 18.04.2015, 30.05.2015, 20.06.2015, 29.08.2015, 26.09.2015, 31.10.2015 and finally on 28.11.2015. The sellers of the land Sri Pothuraju Naryana & Pothuraju Rama Krishnaiah (NT) have not attended the court. The son of the respondent Theerthala Venkateswarlu along with their counsel attended and filed counter with the following averments:

- Respondent is owner and possessor of land to an extent of acs.4.01³/₄ gts in and out of Sy.No.543 situated at Mucharla village, Kamepalli Mandal, Khammam District.
- Respondent is non-tribal and eke-out his livelihood by doing agriculture. The schedule land is the only source of income to his entire family.
- Respondent had purchased the scheduled property on 23.04.1968 through a sada sale deed from its owners and possessors Sri Pothuraju Narayana and Sri Pothuraju Rama Krishna who are also non-tribals, for a valid consideration of Rs.2,000/- per acre prevailing at that time. Respondent had paid the entire consideration to the vendors, immediately and they have handed over the possession to the respondent and since then he is cultivating the land.
- Respondent regularly paying the cist to the revenue authorities, his name is entered as owner and cultivator in the revenue records, his possession over the said land is uninterrupted, undisturbed and undisputed since 1968 onwards.
- Respondent had purchased the land from a non-tribal person in the year 1968 i.e. much prior to coming into force of amendment 1970, as such his transaction is not hit by the provisions of the LTR Act 1/70.
- His purchase is a valid purchase and supported by valid consideration, there is no complaint or allegation or claim against the land by any person nor he violated any of the provisions incorporated in LTR Act.
- It is well settled principle of law that the transactions between non-tribals which were completed prior to coming into force the enactment 1/70 are not affected by the LTR Act 1/1970, as such his transaction is also a valid transaction.
- The Full Bench of the Hon'ble High Court of Judicature of A.P. had laid the law that the transactions between non-tribals prior to 1970 are valid and recognized in law, even though they are carried through sada sale deeds, the validity of such sale deeds cannot be questioned while disposing of the matters under LTR Act – the law laid down by the Full Bench of Hon'ble High Court of A.P. is applicable in his case also.

- There are no valid grounds to initiate proceedings under LTR Act in his case, as such they have to be dropped, if the LTR case is not dropped against him, he would suffer irreparable loss and great injury which cannot be compensated in any manner, his entire family would be undergo lot of sufferance and untold mental agony.
- He filed Xerox copy of sada sale agreement (unregistered sale deed) written on stamp paper worth Rs.3/- in which Theerthala Venkateswarlu S/o Narsaiah hadf purchased the land to an extent of Ac.4.01¾ gts in Sy.No.543 of Mucharla village on 23.04.1968 from Pothuraju Narayana and Pothuraju Rama Krishnaiah (which was executed by another non-tribal is void and it is not supported by any documentary evidence). He has also filed the Xerox copies of cist receipts issued on plain paper on 04.06.70, 03.01.1971, 15.01.72, 15.01.74, 05.1.75 and also filed the Xerox copies of printed cist receipts issued for the year 83-84 to 1987-88, 1989-90 to 1993-94.

5. The Agency Divisional Officer, Kothagudem had disposed the case on 7.5.2016 on the following reasons:

- On examination of pahani extracts submitted by the respondent for the years from 1969-70, 1971-72, 1973-74 to 1975-76, 1978-79, 2008-09, 2010-11 & 2015-16 in respect of Sy.No.543/A to an extent of acs.4.01¾ gts of Mucharla village, the name of the respondent Theerthala Venkateswarlu has not been recorded even as enjoyer upto the year 1972-73 against Sy.No.543/A. Had he really purchased the land in the year 1968, his name would have been recorded in the pahani. However, the name of Theerthala Narsaiah has been incorporated as enjoyer only for the year 1974-75 with different ink and different writing for ac.4.08 gts in Sy.No.543/A making tampering in the revenue records and the name of Theerthala Chidambar Rao has been recorded as enjoyer for the year 1975-76 for Ac.4.08 gts in Sy.No.543/A. Again the name of Theerthala Venkateswarlu has been recorded as enjoyer for the year 1978-79 for Ac.4.08 gts in Sy.No.543/A and the name of Theerthala Chidambar Rao has been recorded as enjoyer for the years 2008-09, 2010-11 & 2015-16 for Ac.4.08 gts in Sy.No.543/A. Thus, it is very clear that the non-tribal respondent has purchased the land after the enactment of Regulation 1 of 1970 and in order to escape from the provisions of Regulation, paper sale agreement has been created by putting the date of purchase before 1970. Further, the ordinary paper receipts of land revenue have no evidentiary value.
- According to Section 35 of Indian Stamp Act, 1989, a document not affixed with required stamps is not admissible evidence.
- Further, according to section 49 of the Registration Act, 1908, no document required by section 17 or by any provision of the transfer of property, 1882 to be registered shall affect any immovable property comprised therein or confer any power of adopt or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. Therefore, the unregistered documents effecting transfer of land in scheduled areas are not admissible as evidence in LTR cases.

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- The Hon'ble Supreme Court has held that the immovable property can be legally and lawfully transferred and conveyed only by a registered sale deed of conveyance. Transactions of the nature of General Power of Attorney sales or sale agreements or will transfers do not convey title and do not amount to transfer nor they can be recognized as valid mode of transfer of immovable property (AIR 2012 SCC 206).
- The Hon'ble High Court in CRP No.1087 of 1996 has held that an unregistered sale deed cannot be taken into account while examining the nature of rights under the regulation 1959 read with 1970.
- Hence, the sada sale agreement furnished by the respondent in token of acquisition of land from another non-tribal in the year 1968 is not valid and in violation of Regulation, 1959 read with 1970. As per the Revenue Records, land has been acquired after the advent of Regulation 1970 in the scheduled area.
- Hence, it was established that the respondent contravened the section 3 (1) of the APSA LTR 1959 r/w APSA LTR 1970 and he came into possession of the land mentioned in the schedule i.e. situated in Mucharla village in Sy.No.543/A measuring asc.4.08 gts.
- The Tahsildar, Kamepalli was directed to take over the land into Government custody under cover of panchanama and assign to landless poor tribals for agriculture purpose.

6. Aggrieved by the above orders of the Agency Divisional Officer, Kothagudem, Sri Theerthala Venkateswarlu S/o Nararsaiah, aged: 80 years, occ: cultivation, R/o Mucherla village, Kamepalli Mandal, Khammam District had filed an Appeal before the Addl.Agent to Govt. & PO ITDA Bhadrachalam under section 3 (3) (a) (ii) of APSALTR 1959 with the following grounds:

- The order dated 07.05.2016 in LTR case No.2/2014/Kmpl passed by the 1st respondent (ADO Kothagudem) is illegal, irregular and contrary to the provisions of APSALTR 1 of 1959 as amended by Regulation 1 of 1970.
- 1st Respondent ought to have considered that the appellant is the absolute owner, possessor and enjoyer of agricultural landed property admeasuring Ac.4.01¾ guntas covered by Survey No.543 situated at Mucherla village, Kamepalli Mandal, Khammam District. The said property was acquired through sada sale ded dated 23.04.1968 for a valid consideration of Rs.2000/- from his vendors by name Pothuraju Narayana and Pothuraju Ram Krishnaiah and since the date of the purchase of the said lands, the appellant and his family members are in possession and cultivating the same without interruption by anyone at any point of time. Whereas, the 1st respondent ignoring the aforesaid facts, without conducting enquiry passed ejectment order dated 07.05.2016 in LTR No.2/2014/Kmpl is illegal and liable to be set aside

- The 1st respondent failed to consider that the appellant's father's name i.e. Theerthala Narsaiah was entered in the land revenue records i.e. adangal pahanies in the year 1970-71, 1973-74 and appellant's name was entered for the year 1974-75, 1978-79 and thereafter till the year 2015-2016 the appellant's son's name i.e. Theerthala Chidambarao where it shows that the family members of the appellant's name was shown as possessor of the said lands which is evidenced that the appellant is in possession of the aforesaid lands. Without considering the said facts and ignoring the aforesaid documentary evidence, the 1st respondent passed ejectment order dated 07.05.2016 in LTR No.2/2014/Kmpl in contravention of the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 as amended by Regulation 1 of 1970 and the said order is liable to be set aside.
- The 1st respondent failed to consider the fact that the appellant filed land cist receipts for different years to show that he is paying land cist to the Government for the aforesaid lands. The 1st respondent admitted in his order that the appellant produced land cist receipts for various years and do not express any negative view on the said cist receipts and intentionally ignored the said land cist receipts and passed the ejectment order dated 07.05.2016 without examining the material evidence available on records.
- The 1st respondent committed grave illegality in passing order dated 07.05.2016 against the appellant and wrongly presumed that the sada sale deed dated 23.04.1968 is created before the year 1970 is false and untenable. In fact, the appellant purchased the aforesaid landed property in the year 1968 from his vendors much prior to the commencement of the Regulation 1 of 1970. Without considering the aforesaid facts, the 1st respondent without any basis and examination of records, wrongly came to conclusion that the sada sale deed dated 23.04.1968 is created and passed order dated 07.05.2016 is illegal and liable to be set aside and the aforesaid purchase of land do not hit by Regulation 1 of 1959 as amended by Regulation 1 of 1970.
- The 1st respondent ought to have considered the settled principles of law that the transactions between non-tribals, which were completed prior to coming into force the commencement of Regulation 1 of 1970 and as such the transactions before Regulation 1 of 1970 is a valid transaction. Unfortunately, the 1st respondent ignoring the settled principles of law, passed ejectment order dated 7.5.2016 in contravention of provisions of LTR 1 of 1959 as amended by Regulation 1 of 1970.
- The 1st respondent committed error in not considering the Full Bench judgement of the Hon'ble High Court of Judicature of Andhra Pradesh where the Hon'ble Court held that the transactions between non-tribals prior to Regulation 1 of 1970 are valid and recognized by law even though any transactions are done through sada sale deeds. Unfortunately, the 1st respondent did not consider settled law laid down by the Hon'ble High Court and wrongly passed ejectment order dated 07.05.2016, is bad in law and liable to be set aside.

- The 1st respondent did not conduct proper enquiry before passed the order dated 07.05.2016 in LTR case No.2/2014/Kmpl and did not understand the legislative intent of APSALTR 1 of 1959 as amended by Regulation 1 of 1970.
- The impugned order dated 07.05.2016 in LTR case No.2/2014/Kmpl passed by the 1st respondent is illegal, irregular, contrary to the provisions of APSALTR 1 of 1959 as amended Regulation 1 of 1970 and rules framed thereunder. As such, the impugned order is liable to be set aside.
- The appellant further humbly submits that he had prima facie title over the aforesaid lands. The appellant have strong case to succeed in the appeal. If the impugned order is allowed to stand, the appellant would suffer irreparable injury and hardship. The balance of convenience is also in favour of appellant. If the impugned order is implemented, it would result in serious miscarriage of justice. Thus, the appellant is constrained to file a petition to suspend operation of impugned order, pending disposal of the main appeal.

7. The appeal was taken on file by the Addl.Agent to Govt. Bhadrachalam vide CMA No.27/2016 and dismissed the same on 24.3.2020 for the following reasons:

- Appellant is claiming the suit scheduled property through sada sale deed dt.23.04.1968 and he filed Xerox copy of the same. 3rd & 4th respondents Pothuraju Narayana S/o Narasimha and Pothura Rama Krishnaiah S/o Narayana both residents of Mucherla, Kamepalli Mandal) already set exparte.
- As seen from the original records the appellant was not entered in any of the Revenue Records before 1970.
- Xerox copy of alleged sada sale deed is not acceptable to substantiate evidence U/s.17 (b) of Registration Act.
- Xerox copies of LR cist receipts filed by the appellant, which does not have credibility, sanctity and value in the eye of law.
- Case attracted the provisions of AP (SA) LTR 1/59 as amended by Regulation 1/70. Hence, lower court order is upheld to take the land into Govt. custody.

8. In the reference 1st read above, Sri Theerthala Venkateswarlu (died) per L.R. Sri T.Chidambara Rao S/o late Venkateswarlu, aged: 60 years, R/o H.No.3-159, Mutcherla village, Kamepalli Mandal, Khammam District has filed the present Revision Petition before the Government under Section 6 of APSALTR 1/59 and its Amendment 1/70 against the orders passed by the Addl. Agent to Government, Bhadrachalam in CMA No.27/2016, dt.24.3.2020 (received on 20.5.2020) and also against orders of the Agency Divisional Officer, Bhadrachalam in LTR case No.2/2014/KMPL dt.7.5.2016. The respondents are 1) Agency Divisional Officer, Kothagudem 2) Tahsildar, Kamepally Mandal, Khammam District 3) Potharaju Narayana S/o Narasimha

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4) Potharaju Rama Krishnaraju S/o Narayana both residents of Mutcherla village, Kamepally Mandal, Khammam District and 5) Additional Agent to Government, Bhadrachalam, Khammam District. The Revision Petitioner urged the following grounds in his Revision Petition:

- The impugned orders are contrary to law and probabilities of the case.
- Section 3 of the APSALTR 1/59 and its Amendment 1/70 prohibits transfer of immovable property after Regulation came into force. If any transfer of immovable property taken place in the Scheduled Area after 3.2.1970 by one non-tribe to another non-tribe, the said transfer is null and void and the authorities constituted under Regulation Act i.e. Agency Divisional Officer or any other officer authorized can pass decree for ejectment restoring the property to the transferor or his/heirs heirs by following the procedure. Full Bench of the Hon'ble High Court reported in AIR 1982 AP.1 considered the issue whether the said Regulation got retrospective effect or not, and if the transfers take place prior to 1/70 can the authorities go into for passing the orders of ejection. The Full Bench declared that the Regulation 1/70 is not having any retrospective effect for transfer of land prior to the 1/70 by one non tribe to another non tribe and the issue cannot come under the purview of authorities constituted under the regulation. The authorities cannot even touch the said transactions and to initiate the proceedings under LTR Regulation, for eviction. The said judgement has become final. In the instant case the sale has taken place in the year 1968 and the pahanies clearly establishes even prior to 1968 the ancestors to the petitioner are in possession and enjoyment. Therefore, the question of entertaining the LTR case and passing orders of ejection is without having any power, jurisdiction and authority.
- The action of Primary and Appellate Authorities in not considering the Cist receipts and pahanies showing about the petitioner's possession and enjoyment is an act of illegality and thereby renders the entire order illegal.
- The orders of both the lower authorities in presuming that the Sada Sale Deed dt.23.4.1968 is a created one, is without any base and evidence. It is not the case that the vendors given statement that they have not sold the land to the petitioners. Without considering the said facts both the authorities wrongly came to the conclusion that the sale deed dt.23.4.1968 is a created one and accordingly the entire orders are illegal.
- Both the authorities in spite of bringing to the notice the Full Bench Judgment of the Court that the authorities have no jurisdiction in respect of the transfers taken place prior to the date of regulation are not at all considered and without there being any speaking order without giving any reasons the Appellate Authority dismissed the appeal and thereby treated the appeal is an empty formality.
- The Appellate Authority and the Primary Authority in spite of producing the pahanies for the year 1964-65, providing the name of the grandfather Sri Narsaiah was shown as enjoyer for the land in question, failure to consider the said important revenue record is fatal and illegal.

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- As per law laid down by the Hon'ble High Court, even unregistered sale deeds are also out of purview of authorities under Regulation if they relates prior to Regulation. The impugned orders are illegal and arbitrary.

9. In the accompanying affidavit, the Revision Petitioner stated that his father late Theerthala Venkateswarlu was the absolute owner, possessor and enjoyer of the agricultural landed property admeasuring acs.4.01¾ gts covered under Sy.No.543 situated at Mutcherla village, Kamepally Mandal, Khammam District. Originally the land belongs to the unofficial respondents who are the pattedars. His father late Theerthala Venkateswarlu purchased the aforesaid landed property from the respondents through Sada Sale Deed on 23.4.1968 for a valid sale consideration of Rs.2,000/-. Even earlier to that, they were in possession and enjoyment of the property because of advance sale amount given to the unofficial respondents. Prior to 1968 itself, his father enjoyed the possession and he started cultivating the land without interruption. He paid land revenue. When a suo moto case was initiated at the instance of Tahsildar, they were asked to appear and accordingly his father appeared and produced copy of Sale Deed dt.23.4.1968 and Xerox copies of Cist receipts dt.4.6.1970, 3.1.1971, 15.1.1972, 15.1.1974, 5.1.1975 and printed (15) receipts for the year 1984-85, 1987-88, 1993-94. His father also produced pahani extracts for the years 1969-70, 1971-72, 1973-74, 1975-76, 1978-79, 2008-09, 2010-11 and 2015-16. He further stated that for the year 1969-70, the entire village of Mutcherla - no enjoyer column was recorded and for the year 1973-74 his grandfather name was recorded as enjoyer, his father was recorded in 2000-01 and his name was recorded and 2018-19 also his name was recorded as enjoyer treating the unofficial respondents as pattedars. For the same Survey number and extent, his grandfather Theerthala Narsaiah's name was shown for the year 1964-65 since they paid advance amounts for sale consideration and taken possession. In spite of producing 1964-65 pahani entered name of his grandfather, the same was not at all considered either by the lower authority or by the appellate authority. The appellate authority based on presumptions and assumptions ignored the sale deed produced and given a finding that they have purchased the land after 1/70 Regulation. The lower authority ignored the sale deed on the ground that the same is not in consonance with the Registration Act, 1908.

10. The petitioner further stated in the affidavit that the primary authority passed orders of ejection against which he filed an appeal before the Project Officer, ITDA, raising 7 grounds and some of the grounds go to the root of the matter, but none of them were considered and by non-speaking order, the appeal was rejected. The orders were passed on 24.3.2020 during lock period and communicated on 20.5.2020 which practice is also not permissible.

The Primary Authority without there being any power and jurisdiction passed orders for ejection. The transactions taken place prior to 3.2.1970 cannot be interfered by authority constituted under Regulation 1/59 and its Amendment 1/70. Full Bench of the Hon'ble High Court reported in AIR 1982 AP (1) declared that the authorities constituted under Regulation 1/59 has no power to deal the sale transactions occurred prior to the Regulation came into force. The action of the lower authorities in directing the Tahsildar for taking over custody of the land under cover of panchanama is once again contrary to the Rules framed under Regulation 1/59. Even the transfers made under un-registered sale deeds, prior to regulation, the

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authorities cannot decide as the decided law. Unless the decree passed by the primary authority is executed in the same manner as decree passed by the Civil Court by Execution Petition, the question of conducting panchanama and taking over custody of the land does not arise and the High Court laid down clear law on this issue.

11. Therefore, in the aforesaid circumstances, the petitioner prayed the Revisional Authority i.e. Government to please call for the records relating to and in connection with the orders passed by the Addl. Agent to Government, Bhadrachalam in CMA No.27/2016 dt.24.3.2020 communicated on 20.5.2020 and orders of the Agency Divisional Officer, Kothagudem in LTR case No.2/2014/KMPL, dt.7.5.2016 and to quash the same as illegal, arbitrary and contrary to provisions of Full Bench Judgement⁴ of Hon'ble High Court reported in AIR 1982 AP (1) and contrary to APSALTR Act 1/59 and its amendment 1/70 and contrary to principles of natural justice.

12. The Revision Petitioner prayed to suspend operation of the orders passed by the Addl. Agent to Government, Bhadrachalam, in CMA No.27/2016, dt.24.3.2020 communicated on 20.5.2020 and orders of the Agency Divisional Officer, Kothagudem in LTR case No.2/2014/KMPL, dt.7.5.2016 pending disposal of the Appeal and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

13. Along with the Revision Petition, the petitioner has submitted the following documents:

- i) Copy of lower court order i.e. Agency Divisional Officer, Kothagudem in LTR Case No.2/2014/Kmpl, dated 7.5.2016 (showing ejectment for an extent of acs.4.08 gts in Sy.No.543/A) situated in Mucharla village of Kamepalli Mandal, Khammam District.
- ii) Copy of Appeal filed before the Appellate Authority i.e. Addl. Agent to Government-cum-Project Officer (ITDA), Bhadrachalam, Khammam District under Section 3 (3) (a) (ii) of APSALTR 1 of 1959 as amended by Regulation 1 of 1970.
- iii) Copy of Appellate court order in CMA No.27/2016, dt.24.3.2020 (i.e. Addl. Agent to Govt. Bhadrachalam).
- iv) Copy of pahani for the year 1964-65 – Mucharla village – Kamepalli Mandal – issued by Naib Tahsildar, Kamepalli (M), Khammam (Dt) TS – Sy.No.543/A shows an extent of acs.4.8 gts in the name of Sri Pothuraju Narayana as pattedar while Sri Theerthala Narsaiah (grandfather) was recorded as enjoyer – issued by Naib Tahsildar, Kamepalli.
- v) Copy of pahani for the year 1973-74 – Mucharla village – Sy.No.543/A recorded name of Sri Pothuraju Narayana as pattedar for an extent of acs.4.08 gts while name of Sri Theerthala Narsaiah (grandfather of petitioner) was shown as enjoyer for the said extent – issued by Tahsildar, Kamepalli.
- vi) Copy of pahani for the year 1974-75 – Mucharla village – issued by Tahsildar, Kamepalli – shows name of Pothuraju Narayana as pattedar for an extent of acs.4.08 gts in Sy.No.543/A and name of Sri Theerthala Venkateswarlu (revision petitioner) was shown as enjoyer for the said extent.
- vii) Copy of pahani for the year 1978-79 – Mucharla village – issued by

Tahsildar, Kamepalli (M) – In Sy.No.543/A for an extent of acs.4.08 gts recorded the name of Sri Pothuraju Narayana while name of Sri Theerthala Venkateswarlu (revision petitioner) was recorded as enjoyer for the said extent.

- viii) Cist receipts dated 4.6.1970, 27.6.1971, 3.1.1971, 15.1.1972, 15.1.1974, 6.1.1986, 7.11.1988, 2.3.1994, etc.
- ix) Xerox copy of sale agreement dated 23.4.1968 on Stamp paper worth Rs.3/- for sale of immovable property worth Rs.8087.50 – executed by Pothuraju Narayana S/o Narsimha and his son Pothuraju Ramakrishnaiah R/o Mucherla village, Yellandu Taluq, Khammam District – in favour of Theerthala Venkateswarlu S/o Narsaiah R/o Mucherla village, Yellandu Taluq, Khammam District – Sy.No.543 extent 4.1¾ gts. @ Rs.2000/- per acre.
- x) Extract of Section 3 of APSA LTR Act:
- xi) **Citations**

i) Copy of AIR 1982 Andhra Pradesh 1 – Full Bench – Ramachandra Rao, Raghuvir and Ramanujulu Naidu, JJ. – Gaddam Narsa Reddy and others, Petitioners v. Collector, Adilabad Dist and others, Respondents.

Writ Petn.No.4204 of 1977 and W.A.Nos.64, 68 and 231 of 1979 and A.A.O.No.151 of 1979, Dt.21.8.1981.

- (A) A.P.Scheduled Areas Land Transfer Regulations (I of 1959) (as amended by Regulations 2 of 1963 and 1 of 1970), S.3 – Applicability – S.3(1) is not retrospective in operation – Transfer of land by Tribal to non-tribal prior to commencement of the Regulation – Dispute as to – Cannot be adjudicated by Authorities under S.3(2).

Section 3 (1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and I of 1970 have no retrospective operation and do not affect transfers made prior to the said Regulation or its amendments coming into force and the authorities under S.3(2) of the Regulation have no jurisdiction to pass orders in relation to the immovable property, covered by such transfers.

The validity or otherwise of the transfers made prior to S.3 (1) or its amendments by Regulation II of 1963 or I of 1970, coming into force, cannot be adjudicated upon under S.3(2) of the Regulation and the same has to be challenged in an appropriate forum constituted for deciding disputes relating to immovable property situated in Scheduled Areas (1976) 2 AP LJ (HC) 212 and W.P.No.776 of 1970, dt.24.8.1971 (Andhra Pra), Approved. (Paras 28, 29, 31, 32).

- (C) **Interpretation of Statutes – Retrospective operation – Presumption when arises.**

Every statute is prima facie prospective unless if it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute manifesting an intention to affect existing rights, it

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shall be deemed to be prospective in operation. Every statute which takes away or impairs vested rights acquired under existing laws or creates new obligation, or imposes a new duty, or attaches a new disability in respect of past transactions, must be presumed to be intended not to have a retrospective effect, and a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. The question whether the statute or any provision in it has retrospective operation has to be determined with reference to the dominant intention of the legislature to be gathered from the language used, the object and the scheme of the Act, the nature of the rights affected and the circumstances under which the statute came into being.

- ii) **1999 (6) ALT 174** – IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD – **The Hon'ble Mr. Justice B.S. Raikote** – Writ Petition Nos. 5684 of 1988 and 15544 of 1989 – Decided on 27-9-1999 – Kola Mahalaxmi and another (Petitioners) vs. Agent to Government, Khammam and others (Respondents).

A.P.SCHEDULED AREAS LAND TRANSFER REGULATION, 1959, Regulation 3 (1) – Applicability of – Transfer of lands in scheduled area – Lands situated in Telangana area – Regulation made applicable to the said area from 1-12-1963 – Authorities under the Act not having jurisdiction to pass orders in respect of transfers made prior to coming into force of the said Regulation – Even if transfers were made under unregistered sale deeds, authorities under the Regulation have no power to go into validity of such transfers – That is a matter for consideration by competent Court in appropriate proceedings – Transfers in question made prior to coming into force of the Regulation – Orders passed setting aside the said transfers made by unregistered sale deeds – Illegal and without jurisdiction – Regulation is prospective in nature and does not affect past transactions.

14. In the reference 2nd read above, Government has admitting the Revision Petition and rejecting the stay prayed for by the petitioner, the Addl. Agent to Govt. & PO ITDA Bhadrachalam has been requested to send original record and para-wise remarks.

15. The Revision Petitioner Sri T.Chidambara Rao S/o late T.Venkateswarlu has also filed WP No.11472 of 2020 in the Hon'ble High Court praying to issue interim direction to the respondent not to interfere with the possession and enjoyment of the petitioner in Sy.No.543 to an extent of Acs.4.08 guntas situated at Mutchlerla village, Kamepally Mandal, Khammam District duly suspending the orders passed by the Government in Memo.No.554/TW.LTR/2020, dt.14.7.2020 so far as rejecting interim orders are concerned, pending disposal of the WP No.11472 of 2020, on the file of the High Court.

16. The Hon'ble High Court in its order dt.5.8.2020 in IA No.1 of WP No.11472 of 2020 while directing issue of notice to the Respondents viz., 1) State of Telangana rep by its Principal Secretary, Tribal Welfare Dept., Telangana Secretariat, Hyderabad 2) The Agency Divisional Officer, Kothagudem District 3) The Tahsildar, Kamepally, Kamepally Mandal, Khammam District 4) Pothuraju Narayana S/o Narasimha R/o Mutcherla village, Kamepally Mandal, Khammam District, 5) Pothuraju Ramakrishna S/o Narayana S/o Mutcherla village, Kamepally Mandal, Khammam District and 6) The Additional Agent to the Government, Bhadrachalam, Bhadrachalam District, made the following ORDER:

"Heard learned counsel for the petitioner and learned Government Pleader for Social Welfare and perused the material on record.

It is brought to the notice of this Court that the impugned order dated 14.07.2020, rejecting the stay application, while admitting the revision petition filed by the petitioner, has been passed by the 1st respondent authority, without even affording an opportunity of personal hearing to the petitioner, or his counsel, through whom the said revision and the stay application have been filed.

It is also brought to the notice of this Court that, this Court, by order dated 29.06.2020 passed in W.P.No.9237 of 2020, directed the 1st respondent authority to dispose of the stay application filed by the petitioner in the revision preferred, within a period of four weeks from the date of receipt of the said order, *'after affording an opportunity of hearing to the petitioner'*.

However, a perusal of the impugned order, does not reflect that either the petitioner or his counsel through whom the said revision has been filed, having been granted an opportunity of hearing, as directed by this Court, while disposing of the stay application.

Learned Government Pleader for Social Welfare, appearing for respondent Nos.1 to 3, vehemently opposes the submission made by the learned counsel for the petitioner and states that the 1st respondent authority, while admitting the revision petition, has taken into consideration the impugned order passed by the 2nd respondent authority and did not find merit for grant of stay and has rejected the same.

However, the said submission made by the learned Government Pleader does not impress this Court for being accepted.

In view of the above, there shall be interim direction as prayed for.

Post on 09.09.2020."

17. As cited in the above order dt.5.8.2020, it has been noted from the earlier order passed by the Hon'ble High Court dt.29.6.2020 in WP No.9237 of 2020 that "Having regard to the submission made as above and considering the fact that the petitioner has already filed revision application before the 1st respondent authority against the order passed by the 6th respondent authority within the time permitted under the Regulation and also having filed stay application seeking stay of operation of the impugned order in the revision preferred, this Court is of the view that the 1st respondent can be directed to dispose of the stay application filed by the

petitioner within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner. Till such time the 1st respondent takes up the stay application for hearing and adjudicate thereon within the time as specified herein above, the 3rd respondent authority viz., Tahsildar, shall not take any further steps to give effect to the order of the 6th respondent authority passed in CMA No.27/2016 and shall maintain status quo. Subject to the above direction, the Writ Petition is disposed of. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.”

18. In the reference 4th read above, the Project Officer, ITDA & Addl. Agent to Government Bhadrachalam in his Lr.Rc.No.A5/225/LTR/2020 (CMA No.28/2016), dated 17.08.2020 has submitted the following para-wise remarks:

- The contention of the petitioner to say that the impugned orders are contrary to law and probabilities of the case are not true and far from truth. The Addl. Agent to Govt. Bhadrachalam (4th respondent herein) passed orders properly and rightly according to the provisions made under AP (SA) LTR 1/59 as amended by the Regulation 1/70, as the appellant (petitioner herein) failed to produce the documents required to prove his claim made under appeal.

The appellant (petitioner herein) has filed only the documents such as:

1. Copy of orders in LTR case No.2/2014/Kmpl dated 07.05.2016 of the Agency Divisional Officer, Kothagudem (1st respondent herein).
2. Xerox copy of sada sale deed dated: 24.04.1968.
3. Xerox copies of Adangal pahanies for the year 1970-71, 1973-74, 1974-75 & 1975-76.
4. Xerox copies of land revenue cist receipts for the years 4.06.1970, 03.01.1971, 15.01.1972, 15.01.1974, 6.01.1986, 7.11.1988 & 2.03.1994.

As verified from the original pahanies, the appellant (petitioner herein) has not entered into revenue records before 1970 to prove that he has purchased the scheduled land through sada sale deed dated 24.04.1968. However, the sada sale deed is not acceptable to substantiate evidence under section 17 (B) of Registration Act. The documents which are necessarily to be registered, but not registered are not admissible in evidence and such documents can be used for collateral purpose only.

(Mohammed Rasool versus Secretary, Social Welfare Dept., Govt. of Andhra Pradesh in W.P.No.9429/1989 dated: 19.08.1998 (High Court of A.P. un-reported).

- The appellant (petitioner herein) failed to establish locus standi as claimed under appeal.
- Hence, the appeal filed by the appellant (petitioner herein) has been dismissed upholding the orders passed by the lower court, Agency Divisional Officer, Kothagudem.
- As regards the authorities under the regulation have no power to initiate the LTR proceedings, if the transfers taken place prior to regulation 1970, the contention of the petitioner is not correct – APSA

(Contd....14)

LTR Sec.3 – the agreement of sale alleged to have been entered on 03.05.1960 on a stamp paper denomination of Rs.1.50 which was stated as (vikraya patram) which was held to be a sale deed and therefore in violation of section-54 of transfer of property Act since it was not registered, though it was pleaded on behalf of the non-tribals that the sale has been taken place prior to the commencement of the regulation, but the fact findings authorities gave a clear finding on the basis of revenue records and the non-tribals that the sale was after the commencement of the regulation and the non tribals came into possession according to the evidence on record only after the commencement of the regulation. Held, therefore that the alleged transaction took place after the commencement of the regulation sale was hit by the regulations and accordingly was illegal and void. (Vaddi Veeraiah v/s Agent to Government Khammam & other 1996 (1) ALD 107 (DB).

- The another contention of the petitioner is that in addition to that the land revenue receipts from the date of purchase and pahani copies produced amply establishes that the land was purchased prior to the regulation came into force is also not correct. The land revenue cist receipts which do not have any credibility and legal sanctity and value in the eye of law. The alleged pahani extracts for the year 1970-71 and 1973-74 to 1975-76 which filed along with appeal filed by the appellant (petitioner herein) are no way useful to prove the possession over the scheduled land by the petitioner herein which are before the cutoff date and also not find entered the name of the petitioner in the Revenue records before 1970.
- In the circumstances of the case above, the revision petition filed by the petitioner before the Government (TW) Dept. is not maintainable having no valid and tenable grounds to grant any relief prayed therein and liable for dismissal.

19. In the reference 10th read above, the Addl. Agent to Govt.& Project Officer, ITDA, Bhadrachalam has submitted the case record in CMA No. 28/2016.

20. In the reference 11th read above, the counsel for petitioner has submitted the following Written Arguments on 9.2.2021

- The Revision Petitioner is the absolute owner and possessor and enjoyer of the agricultural landed property admeasuring Ac.4.01¾ guntas covered in Sy.No.543 situated at Mutchlerla Village, Kamepalli Mandal, Khammam District. Originally the land belongs to Potharaju Narayana who is the pattedar. The petitioner's late father purchased the land through Sada Sale Deed dt.23.4.1968 for a valid sale consideration of Rs.2,000/-. Even prior to that the father of the petitioner enjoyed the possession since advance sale amount given to the original pattedar. When Suo Moto case was initiated under LTR proceedings at the instance of Tahsildar, the petitioner's father was asked to appear before the authorities. He produced copy of sale deed ddt.23.4.1968 and copies of Cist Receipts dt.4.6.1970, 3.1.1971, 15.1.1972, 15.1.1974, 5.1.1975 and 15 printed receipts dt 1993-94. The petitioner also produced pahani extracts for the year 1969-70, 1971-72, 1973-74, 1975-76, 1978-79, 2008-09, 2010-11, 2-15-16. For the year 1969-70, pahani in respect of the entire village of Mutchlerla, no enjoyer column was recorded. For the year 1973-74,
(Contd....15)

the petitioner's grandfather name was recorded. Therfater 1974-75 also as enjoyer, petitioner's father name was recorded upto 2000-01 and the petitioner's name was recorded for the year 2018-19. Even for the year 1964-65, the petitioner's grandfather T.Narsaiah's name was shown since advance amounts were paid to the original pattadars. In spite of producing all the above documents, the Primary Authority or Appellate Authority not considered the same. Based on assumptions and presumptions, sale deed produced was ignored and finding was given that the purchase was made after 1970 i.e. after regulation. It is on the ground that the alleged sale deed is contrary to the Registration Act 1908 and the same was ignored.

- The Primary Authority passed orders of rejection. Against the said orders, Revision Petitioner filed Appeal before the Project Officer, ITDA, raising several grounds. Some of the grounds go to the root of the matter. But none of them was considered by way of non speaking order appeal was rejected. The orders were pronounced on 24.3.2020 during the lock down period and communicated on 20.5.2020.
- As per the Full Judgement of Hon'ble High Court reported in AIR 1982 AP 1 in respect of transfer of immovable properties prior to 3.2.1970, LTR authorities have no jurisdiction to entertain any LTR case. The Hon'ble High Court considered any registered sale deeds entertained prior to the regulation 1/70. 1999 (6) ALT 174 the Hon'ble High Court declared the authorities have no jurisdiction even to consider the validity of sale agreements entered prior to 3.2.1970. In view of the same, the orders passed by both the authorities are without having any power and jurisdiction and the sales transactions entered are valid and thereby the question of initiation of LTR proceedings does not arise.
- The Revision Petitioner under RTI obtained information from the Tahsildar in respect of maintenance of Adangals prior to 1960, 1970 in respect of Mutcherla village. It was replied that the enjoyer column was not recorded in the entire Mutcherla village for the year 1969-70 by the Tahsildar Office. Both the authorities passed orders for ejection but as per the decided law by this court reported in 2005 (6) ALD 127 unless Execution Petition is filed for affecting execution of the decree passed either by the lower authority or by the appellate authority, the question of conducting panchanama and taking possession does not arise. All the documentary evidences mentioned in the Written Arguments are already filed along with the Revision Petition.
- In view of the facts and circumstances stated above, the orders passed by both the Lower Authorities are to be quashed.

21. The counsel for petitioner has submitted the following citations/documents in support of his arguments along with the Written Arguments:

- i) **1996(6) ALT 174 (Citation) – Judgement by the Hon'ble Mr.Justice B.S.Raikote in Writ Petition Nos.5684 of 1988 and 15544 of 1989 on the file of the Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad – Decided on 27.9.1999 – Kola Mahalaxmi and another (Petitioners) vs. Agent**

to Government, Khammam and others (Respondents) – related to Regulation 3 (1) – Applicability of – Transfer of lands in scheduled area – Lands situated in Telangana area – Regulation made applicable to the said area from 1-12-1963 – Authorities under the Act not having jurisdiction to pass orders in respect of transfers made prior to coming into force of the said Regulation – Even if transfers were made under unregistered sale deeds, authorities under the Regulation have no power to go into validity of such transfers – That is a matter of consideration by competent Court in appropriate proceedings – Transfers in question made prior to coming into force of the Regulation – Orders passed setting aside the said transfers made by unregistered sale deeds – Illegal and without jurisdiction – Regulation is prospective in nature and does not affect past transactions.

- ii) 2005 (6) ALD 127 – IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD – C.Y.SOMAYAJULU, J. – Eighth Day of September, 2005 – WP No.3586 of 1996 – Narapareddy Bujjamma v. District Collector, Nellore District and others.
- iii) Copy of adjacent landlord's statement dt.07.08.2020: This is a sworn-in statement by 1) Teerthala Ratnamma 2) V.Biksham 3) B.Biksham and 4) V.Ramakrishna – recorded by the revenue officials i.e. VRO Mutcherla, Girdawar-I, Kamepalli and attested by the Naib Tahsildar, Kamepalli Mandal – wherein they deposed that on the request of Mandal Girdawar-I, Kamepalli they came to agricultural land in Sy.No.543/E admeasuring acs.4.15 on 7.8.2020 at 11.00 AM and stated that Sri Teerthala Chidambara Rao S/o Venkateswarlu is known to them well. He got inherited the land in Sy.No.543 and cultivating since 52 years. Mango grove is raised in the land.
- iv) Memo.Rc.No.A/46/2021, dt.18.1.2021 issued by Dy.Tahsildar, Kamepalli (M), Khammam Dist. – wherein it was affirmed that in some of the pahanies of 1968-69 and 1969-70 names were not entered in the enjoyers column.

22. SYPNOSIS

The lower court i.e. the Agency Divisional Officer, Kothagudem in LTR case No.2/2014/Kmpl in his order dt.7.5.2016 had passed ejectment order for an extent of 4 acres 08 guntas in Sy.No.543/A situated in Mutcherla village of Kamepalli Mandal in Khammam District against Sri Theerthala Venkateswarlu i.e. father of the revision petitioner Sri Theerthala Chidambar Rao for the following reasons:

- On examination of pahani extracts submitted by the respondent for the years from 1969-70, 1971-72, 1973-74 to 1975-76, 1978-79, 2008-09, 2010-11 & 2015-16 in respect of Sy.No.543/A to an extent of acs.4.01¾ gts of Mucharla village, the name of the respondent Theerthala Venkateswarlu has not been recorded even as enjoyer upto the year 1972-73 against Sy.No.543/A. Had he really purchased the land in the year 1968, his name would have been recorded in the pahani. However, the name of Theerthala Narsaiah

has been incorporated as enjoyer only for the year 1974-75 with different ink and different writing for ac.4.08 gts in Sy.No.543/A making tampering in the revenue records and the name of Theerthala Chidambar Rao has been recorded as enjoyer for the year 1975-76 for Ac.4.08 gts in Sy.No.543/A. Again the name of Theerthala Venkateswarlu has been recorded as enjoyer for the year 1978-79 for Ac.4.08 gts in Sy.No.543/A and the name of Theerthala Chidambar Rao has been recorded as enjoyer for the years 2008-09, 2010-11 & 2015-16 for Ac.4.08 gts in Sy.No.543/A. Thus, it is very clear that the non-tribal respondent has purchased the land after the enactment of Regulation 1 of 1970 and in order to escape from the provisions of Regulation, paper sale agreement has been created by putting the date of purchase before 1970. Further, the ordinary paper receipts of land revenue have no evidentiary value.

- According to Section 35 of Indian Stamp Act, 1989, a document not affixed with required stamps is not admissible evidence.
- According to section 49 of the Registration Act, 1908, effecting transfer of land in scheduled areas are not admissible as evidence in LTR cases.
- The Hon'ble Supreme Court has held that the immovable property can be legally and lawfully transferred and conveyed only by a registered sale deed of conveyance. Transactions of the nature of General Power of Attorney sales or sale agreements or will transfers do not convey title and do not amount to transfer nor they can be recognized as valid mode of transfer of immovable property (AIR 2012 SCC 206).
- The Hon'ble High Court in CRP No.1087 of 1996 has held that an unregistered sale deed cannot be taken into account while examining the nature of rights under the regulation 1959 read with 1970.
- Hence, the sada sale agreement furnished by the respondent in token of acquisition of land from another non-tribal in the year 1968 is not valid and in violation of Regulation, 1959 read with 1970. As per the Revenue Records, land has been acquired after the advent of Regulation 1970 in the scheduled area.
- Hence, it was established that the respondent contravened the section 3 (1) of the APSA LTR 1959 r/w APSA LTR 1970 and he came into possession of the land mentioned in the schedule i.e. situated in Mucharla village in Sy.No.543/A measuring asc.4.08 gts.

The Addl.Agent to Govt. Bhadrachalam vide CMA No.27/2016 also dismissed the appeal on 24.3.2020 confirming orders of lower court citing following reasons:

- Appellant is claiming the suit scheduled property through sada sale deed dt.23.04.1968 and he filed Xerox copy of the same. 3rd & 4th respondents Pothuraju Narayana S/o Narasimha and Pothura Rama Krishnaiah S/o Narayana both residents of Mucherla, Kamepalli Mandal) already set exparte.

(Contd....18)

- As seen from the original records, the appellant was not entered in any of the Revenue Records before 1970.
- Xerox copy of alleged sada sale deed is not acceptable to substantiate evidence U/s.17 (b) of Registration Act.
- The Xerox copies of LR cist receipts filed by the appellant, which does not have credibility, sanctity and value in the eye of law.
- Case attracted the provisions of AP (SA) LTR 1/59 as amended by Regulation 1/70. Hence, lower court order is upheld to take the land into Govt. custody.

23. Arguments putforth by the Revision Petitioner:

i) Before the lower court i.e. Agency Divisional Officer, Kothagudem in LTR case No.2/2014/Kmpl:

- He is owner and possessor of land to an extent of acs.4.01¾ gts in and out of Sy.No.543 situated at Mucharla village, Kamepalli Mandal, Khammam District.
- Respondent is non-tribal and eke-out his livelihood by doing agriculture. The schedule land is the only source of income to his entire family.
- He had purchased the scheduled property on 23.04.1968 through a sada sale deed from its owners and possessors Sri Pothuraju Narayana and Sri Pothuraju Rama Krishna for a valid consideration of Rs.2,000/- per acre and got possession.
- Respondent regularly paying the cist to the revenue authorities, his name is entered as owner and cultivator in the revenue records, his possession over the said land is uninterrupted, undisturbed and undisputed since 1968 onwards.
- The purchase was from a non-tribal in the year 1968 i.e. much prior to coming into force of amendment 1970, as such his transaction is not hit by the provisions of the LTR Act 1/70.
- It is well settled principle of law that the transactions between non-tribals which were completed prior to coming into force the enactment 1/70 are not affected by the LTR Act 1/1970, as such his transaction is also a valid transaction.
- The Full Bench of the Hon'ble High Court of Judicature of A.P. had laid the law that the transactions between non-tribals prior to 1970 are valid and recognized in law, even though they are carried through sada sale deeds, the validity of such sale deeds cannot be questioned while disposing of the matters under LTR Act – the law laid down by the Full Bench of Hon'ble High Court of A.P. is applicable in his case also.
- There are no valid grounds to initiate proceedings under LTR Act in his case, as such they have to be dropped.

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ii) **Before the appellate authority i.e. Addl.Agent to Govt. & PO ITDA Bhadrachalam in CMA No.27/2016:**

- a) He is the absolute owner, possessor and enjoyer of agricultural landed property admeasuring Ac.4.01 $\frac{3}{4}$ guntas covered by Survey No.543 situated at Mucherla village, Kamepalli Mandal, Khammam District which was acquired through sada sale deed dated 23.4.1968 for a valid consideration of Rs.2000/- from the vendors by name Pothuraju Narayana and Pothuraju Ramakrishnaiah, and in possession and enjoyment of the same without interruption by anyone at any point of time. Whereas, the 1st respondent ignoring the aforesaid facts, without conducting enquiry passed ejectment order dated 07.05.2016 in LTR No.2/2014/Kmpl, is illegal and liable to be set aside
- b) 1st respondent i.e. Agency Divisional Officer, Kothagudem failed to consider that the appellant's father's name i.e. Theerthala Narasaiah was entered in the land revenue records i.e. adangal pahanies in the year 1970-71, 1973-74 and appellant's name was entered for the year 1974-75, 1978-79 and thereafter till the year 2015-2016 the appellant's son's name i.e. Theerthala Chidambarao (revision petitioner herein) which show that the family members of the appellant were shown as possessor of the land. Without considering the said facts and ignoring the aforesaid documentary evidence, the Agency Divisional Officer, Kothagudem passed ejectment order on 7.5.2016 which is liable to be set aside.
- c) Agency Divisional Officer, Kothagudem failed to consider the fact that the appellant filed land cist receipts for different years to show that he is paying land cist to the Government for the aforesaid lands. He admitted the same in his order and did not express any negative view on the said cist receipts, but intentionally ignored the said land cist receipts and passed ejectment order on 7.5.2016 without examining material evidence available on record.
- d) Agency Divisional Officer, Kothagudem committed grave illegality in passing order dated 07.05.2016 wrongly presuming that the sada sale deed dated 23.34.1968 was created before the year 1970, is false and untenable. In fact, the appellant purchased the aforesaid landed property in the year 1968 from his vendors much prior to the commencement of the Regulation 1 of 1970 and thus not hit by the Regulation 1 of 1959 as amended by Regulation 1 of 1970.
- e) ADO Kothagudem ought to have considered the settled principles of law that the transactions between non-tribals, which were completed prior to coming into force the commencement of Regulation 1 of 1970, is a valid transaction. But, the ADO ignoring the settled principles of law, passed ejectment orders on 7.5.2016 in contravention of provisions of LTR 1 of 1959 as amended by Regulation 1 of 1970.
- f) ADO Kothagudem committed error in not considering the Full Bench judgement of the Hon'ble High Court of Judicature of Andhra Pradesh wherein the Hon'ble Court held that the transactions between non-tribals prior to Regulation 1 of 1970 are valid and

recognized by law even though any transactions are done through sada sale deeds. The ADO Kothagudem did not consider the settled law laid by the Hon'ble High Court and wrongly passed ejectment orders on 7.5.2016, is bad in law and liable to be set aside.

- g) ADO Kothagudem did not conduct proper enquiry before passing order on 7.5.2016 and did not understand the legislative intent of Regulation 1 of 1959 as amended by Regulation 1 of 1970.

iii) **Before the Government in the present Revision Petition:**

- i) Section 3 of the APSALTR 1/59 and its Amendment 1/70 prohibits transfer of immovable property after Regulation came into force. If any transfer of immovable property taken place in the Scheduled Area after 3.2.1970 by one non-tribe to another non-tribe, the said transfer is null and void and the authorities constituted under Regulation Act i.e. Agency Divisional Officer or any other officer authorized can pass decree for ejectment restoring the property to the transferor or his/heirs heirs by following the procedure.
- ii) Full Bench of the Hon'ble High Court reported in AIR 1982 AP 1 considered the issue whether the said Regulation got retrospective effect or not, and if the transfers take place prior to 1/70, can the authorities go into for passing the orders of ejection. The Full Bench declared that the Regulation 1/70 is not having any retrospective effect for transfer of land prior to the 1/70 by one non tribe to another non tribe and the issue cannot come under the purview of authorities constituted under the regulation. The authorities cannot even touch the said transactions and to initiate the proceedings under LTR Regulation, for eviction. The said judgement has become final.
- iii) In the instant case the sale has taken place in the year 1968 and the pahanies clearly establish even prior to 1968 the ancestors to the petitioner are in possession and enjoyment. Therefore, the question of entertaining the LTR case and passing orders of ejection is without having any power, jurisdiction and authority.
- iv) The action of Primary and Appellate Authorities in not considering the Cist receipts and pahanies showing about the petitioner's possession and enjoyment is an act of illegality and thereby renders the entire order illegal.
- v) The orders of both the lower authorities in presuming that the Sada Sale Deed dt.23.4.1968 is a created one, is without any base and evidence. It is not the case that the vendors given statement that they have not sold the land to the petitioners. Without considering the said facts both the authorities wrongly came to the conclusion that the sale deed dt.23.4.1968 is a created one - therefore, the entire orders are illegal.
- vi) Both the authorities in spite of bringing to the notice the Full Bench Judgement of the Court that the authorities have no jurisdiction in respect of the transfers taken place prior to the date of regulation are not at all considered and without there being any speaking order without giving any reasons the Appellate Authority dismissed the appeal and thereby treated the appeal is an empty formality.

vii) The Appellate Authority and the Primary Authority in spite of producing the pahanies for the year 1964-65, providing the name of the grandfather Sri Narsaiah was shown as enjoyer for the land in question, failure to consider the said important revenue record, is fatal and illegal.

viii) As per law laid down by the Hon'ble High Court, even unregistered sale deeds are also out of purview of authorities under Regulation, if they relates prior to Regulation.

24. Now the issues that arise for adjudication before the Government are:

- i) Whether the Revision Petitioner is in possession and enjoyment of land in Sy.Nos.543/A for an extent of acs.4.08 guntas from 1968 onwards?
- ii) Whether the sada sale agreement dt.23.4.1968 is valid in the eye of law or not?

For point (i):

The pahanies issued by the revenue authorities from 1964-65 onwards, land revenue receipts, the fact that certain names were not recorded in the pahanies of 1968-69, 1969-70 in Mucherla (as informed by the revenue authorities vide Memo.No.A/46/2021, dt.18.1.2021) and statements of the neighbouring landholders recorded by the revenue authorities on 7.8.2020, clearly speak about possession and enjoyment of the Revision Petitioner right before the Regulation I of 1970 came into force i.e. from 1968 and all these are corroborating documentary evidences.

For point (ii)

The Full Bench of the Hon'ble High Court in WP No.4204 of 1977 and WA Nos. 64, 68 and 231 of 1979 and AAO No1.51 of 1979, dt.21.8.1981 held that Section 3 (1) of the Regulation I of 1970 is not retrospective in operation and cannot be adjudicated by the authorities under Section 3 (2) of the Regulation. The summary of the decision is as follows:

- (1) A transfer of immovable property situated in agency tracts, made after the coming into force of the A.P.Scheduled Areas Land Transfer Regulation I of 1959 or its amendment Regulation II of 1963 or Amendment Regulation I of 1970, even if made in compliance with the provisions of the Transfer of Property Act, Indian Registration Act or Hyderabad Tenancy and Agricultural Lands Act or any other law applicable thereto, is null and void, if it contravenes the provisions of S.3(1) of the Regulation I of 1959 or its amending regulations, and under S.3(2) of the said Regulation, the authorities mentioned therein can decree ejectment of the persons claiming under such transfer and pass orders restoring the lands to the transferors or their successors or pass orders for disposing of the said property as directed therein.
- (2) Section 3 (1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and I of 1970 have no retrospective operation and do not affect transfers made prior to the said

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Regulation or its amendments coming into force and the authorities under Section 3 (2) of the Regulation have no jurisdiction to pass orders in relation to the immovable property covered by such transfers.

- (3) The validity or otherwise of the transfers made prior to S.3(1) or its amendments by Regulation II of 1963b or I of 1970 coming into force, cannot be adjudicated upon under S.3(2) of the Regulation and the same has to be challenged in an appropriate forum constituted for deciding disputes relating to immovable property situated in Scheduled Areas.

Para 32. Applying the said conclusions to the facts of the present case, the transfers in WP No.4204/77 having been made prior to the coming into force of the Regulation, they do not contravene the provisions of Section 3 (1) and, therefore, the Special Deputy Collector, Tribal Welfare or the District Collector-cum-Agent to the State Government have no jurisdiction to pass orders under S.3(2) of the said Regulation declaring the said transfers as null and void.

Para 33. Accordingly, the Writ Petition W.P.No.4204/77 is allowed and the impugned order is quashed, but in the circumstances, without costs. Advocate's fee Rs.150/-.

Writ Appeals Nos. 64/79, 68/79, 231/79 and CMA 151/79.

Para 34. These appeals will be posted before the Division Bench for disposal in the light of opinion rendered by us on this reference."

25. The counsel for petitioner also cited another settled legal position declared by the Hon'ble High Court in WP Nos.5684 of 1988 and 15544 of 1989 decided on 27.9.1999 (Kola Mahalaxmi and another vs Agent to Government, Khammam and others) – wherein the Hon'ble High Court has declared that the Regulation made applicable to Telangana area from 1.12.1963 and authorities under the Act not having jurisdiction to pass orders in respect of transfers made prior to coming into force of the said Regulation including the transfers that were made under unregistered sale deeds.

26. Further, as per Section 17 clause (g) (inserted by A.P. Act 4 of 1999), the agreement of sale of immovable property of the value of one hundred rupees and upwards requires registration w.e.f. 1.4.1999 as also held by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Civil Revision Petition No.4066 of 2016, dt.30.11.2016 – operative portion of which is as follows:

"The main and very first requirement of law to file a suit for Specific Performance of an agreement of sale is that there should be a valid agreement of sale in view of A.P. State amendment by incorporating clause (g) to Section 17 (1) of the Registration Act, 1908, with effect from 01.04.1999. As per the said amendment all agreements of sale of immovable property worth more than Rs.100/- compulsorily be registered."

27. In the present case, the transaction took place in the year 1968 through agreement of sale dated 23.4.1968 which is much prior to enactment of Act 4 of 1999 and hence, it does not require registration mandatorily as the said Act came into force from 01.04.1999. Moreover, the grounds and arguments made in the Revision Petition are buttressed by corroborating documentary evidences confirming possession and enjoyment of land by the Revision Petitioner much before the advent of the Regulation I of 1970 came into force i.e. 3.2.1970.

28. Therefore, Government after careful examination of the case in detail with reference to the material evidences available on record and other documentary evidences submitted by the revision petitioner before the Government in Revision and with Written Arguments and in the light of the corroborating documentary evidences as discussed for issue at point (i), having due respect & credence to the settled legal positions, clause (g) of Section 17 (1) of the Registration Act, 1908 discussed under point (ii), hereby allow the Revision Petition filed by Sri Theerthala Chidambar Rao S/o late Venkateswara Rao R/o Mutcherla (v) of Kamepally Mandal, Khammam District to the extent of land admeasuring acs.4.08 gts in Sy.No.543/A duly setting aside orders of both the lower and appellate courts in LTR case No.2/2014/Kmpl, dt.7.5.2016 of Agency Divisional Officer, Kothagudem and CMA No.27/2016, dt. 24.3.2020 of Addl. Agent to Government & PO ITDA Bhadrachalam, respectively.

29. The original case records received in the reference 10th read above, are returned herewith to the Addl. Agent to Government & Project Officer, ITDA Bhadrachalam, Bhadradi Kothagudem District and requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

**Dr. CHRISTINA Z.CHONGTHU
SECRETARY TO GOVERNMENT**

To

1. Sri. Sri Theerthala Chidambara Rao S/o late Venkateswarlu,
R/o. H.No. 3-159, Mutcherla village, Kamepalli Mandal,
Khammam District (Revision petitioner).
2. The Additional Agent to Government & Project Officer, ITDA
Bhadrachalam, Bhadradi Kothagudem District (w.e.) (BY RPAD)

Copies to:

1. The Agency Divisional Officer, Kothagudem,
Bhadradi Kothagudem District.
2. The Tahsildar, Kamepalli Mandal, Khammam District. .
3. M/S. P.V. Ramana, E.R. Savithri, B.Sravan Kumar, Advocates,
Flat No. 1, Banjara Sangeet Apartments, Kapadiya Line,
Hyderabad-82 (Counsel for Revision Petitioner)
4. Sri Pothraju Ramakrishnaraju, S/o. Narayana, Mutcherla (V),
Kamepally (M), Khammam District.
5. Sri Pothraju Narayana, S/o. Narsimha, Mutcherla (V), Kamepally (M),
Khammam District.
6. The PS to Hon'ble Minister for ST Welfare, W&CW.
7. The PS to Secretary (TW)
8. The PS to Special Secretary (TW)
9. SF/SC

//FORWARDED:: BY ORDER//

SECTION OFFICER